

AMENDED IN SENATE APRIL 28, 2011

**SENATE BILL**

**No. 763**

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**Introduced by Senator Steinberg**

February 18, 2011

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An act to add the heading of Chapter 1 (commencing with Section 57000) to, and to add Chapter 2 (commencing with Section 57030) to, Division 37 of, the Health and Safety Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

SB 763, as amended, Steinberg. Environmental protection: California Performance Plus Program.

The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA requires the Office of Planning and Research to prepare and develop proposed guidelines for the implementation of CEQA by public agencies. CEQA requires that the guidelines contain various objectives, criteria, and procedures.

This bill would authorize the Secretary for Environmental Protection to establish programs to, among other things, recognize facilities and persons that have demonstrated a commitment to enhanced environmental performance, including, at a minimum, developing or initiating implementation of an environmental management system. The bill would define "environmental management system" as a comprehensive, cohesive set of policies and procedures adopted by a facility or person and used to establish environmental goals, meet and

maintain those goals, evaluate environmental performance, and achieve measurable improvement in environmental performance.

The bill would require the secretary to develop guidelines and procedures for implementation of the program, including procedures for submitting applications, guidelines for annual reports, and procedures for reviewing program implementation. The bill would require ~~for~~ Governor's Performance Plus Awards to be awarded annually to recognize participants in the program that have demonstrated innovation in the implementation of pollution prevention practices and other efforts to reduce environmental impacts.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The heading of Chapter 1 (commencing with  
2 Section 57000) is added to Division 37 of the Health and Safety  
3 Code, to read:

4  
5 CHAPTER 1. ENVIRONMENTAL REGULATION

6  
7 SEC. 2. Chapter 2 (commencing with Section 57030) is added  
8 to Division 37 of the Health and Safety Code, to read:

9  
10 CHAPTER 2. CALIFORNIA PERFORMANCE PLUS PROGRAM

11  
12 57030. For the purposes of this chapter, the following  
13 definitions shall apply:

14 (a) "BDOs" means the boards, departments, and offices of the  
15 California Environmental Protection Agency.

16 (b) "Cal-EPA" means the California Environmental Protection  
17 Agency.

18 (c) "*Enhanced environmental performance evaluator*" means  
19 *an individual or organization that is functionally and*  
20 *administratively independent of the facility being evaluated and*  
21 *is responsible for performing a sustainability assessment of the*  
22 *facility's practices and performance according to criteria*  
23 *established by an independent third-party sustainability index as*  
24 *adopted or certified by Cal-EPA.*

25 (e)

(d) “Environmental management system” means a comprehensive, cohesive set of policies and procedures adopted by a facility and used to establish environmental goals, to meet and maintain those goals, to evaluate environmental performance, and to achieve measurable or noticeable improvements in environmental performance, through planning, documented management and operational practices, operational changes, self-assessments, and management involvement and review. The term shall include, but not be limited to, any such system developed in accordance with the International Organization—of *for* Standardization (ISO) 14001 standards.

~~(d)~~

(e) “E2” means an environmental enterprise.

~~(e)~~

(f) “E3” means an exemplary environmental enterprise.

~~(f)~~

(g) “E4” means an extraordinarily exemplary environmental enterprise.

~~(g)~~

(h) “Facility” means a manufacturing, business, agricultural, or governmental site or installation involving one or more contiguous buildings or structures under common ownership or management.

~~(h)~~

(i) “Independent third-party sustainability index” means a rating system or index that includes a qualitative and quantitative point system that accumulates information on the sustainable practices of a facility, such as, but not limited to, Sustainability Competency and Opportunity Rating and Evaluation (SCORE) or Underwriters Laboratory (UL) 880: *of a facility*.

~~(i)~~

(j) “Penalty mitigation” means that monetary penalties in an enforcement action may be reduced or waived, and an enforcement agency may elect not to refer a violation for criminal prosecution.

~~(j)~~

(k) “Program” means the California Performance Plus Program.

~~(k)~~

(l) “Record of sustained compliance” means that facility meets all of the following:

(1) A judgment or conviction has not been entered against it, or against any key personnel of the facility or any person with an

1 ownership interest in the facility, for a criminal violation of  
2 environmental protection laws of the United States, the state, or  
3 any other state in the previous five years.

4 (2) Has not been the cause of, nor liable for, more than two  
5 significant environmental violations in the previous three years.

6 (3) Has no unresolved notices of violations or potential  
7 violations of environmental requirements with Cal-EPA or one of  
8 the BDOs.

9 (4) Is in compliance with the terms of any order or decree,  
10 executive compliance agreement, or related enforcement measure  
11 issued by Cal-EPA, one of the BDOs, or the United States  
12 Environmental Protection Agency.

13 (5) Has not demonstrated in any other way an unwillingness or  
14 inability to comply with environmental protection requirements.

15 ~~(t)~~

16 (m) “Secretary” means the Secretary for Environmental  
17 Protection.

18 57031. Cal-EPA may establish programs to recognize a facility  
19 that has demonstrated a commitment to enhanced environmental  
20 performance and to encourage innovations in environmental  
21 protection.

22 57032. (a) The secretary shall establish different categories  
23 of participation and the criteria and benefits for each category. The  
24 categories shall include, but not be limited to, all of the following:

25 (1) An E2 facility.

26 (2) An E3 facility.

27 (3) An E4 facility.

28 (b) (1) In order to participate as an E2 facility, a facility shall  
29 demonstrate all of the following:

30 (A) It is developing an environmental management system or  
31 has initiated implementation of an environmental management  
32 system.

33 (B) It has a commitment to pollution prevention and a plan to  
34 reduce environmental impacts from its operations.

35 (C) It has a record of sustained compliance with environmental  
36 requirements.

37 (2) To apply to become an E2 facility, an applicant shall submit  
38 all of the following information to Cal-EPA:

39 (A) A policy statement outlining the applicant’s commitment  
40 to improving environmental quality.

1 (B) An evaluation of the applicant's environmental impacts.

2 (C) The applicant's objectives and targets for addressing  
3 significant environmental impacts.

4 (D) ~~The~~ *An* independent third-party sustainability index rating  
5 for the facility.

6 (E) A description of the applicant's pollution prevention  
7 program.

8 (3) A facility may participate in this program for up to three  
9 years, and may apply to renew its participation at the expiration  
10 of each three-year period. Incentives for an E2 facility include,  
11 but are not limited to, public recognition of facility performance,  
12 including the ability to use for promotional purposes a logo to be  
13 developed by Cal-EPA for E2 facilities, ~~and reduced fees.~~

14 (c) (1) In order to participate as an E3 facility, a facility shall  
15 demonstrate all of the following:

16 (A) It has a fully implemented environmental management  
17 system.

18 (B) It has a pollution prevention program with documented  
19 results.

20 (C) It has a record of sustained compliance with environmental  
21 requirements.

22 (2) To apply to become an E3 facility, an applicant shall submit  
23 all of the following information to Cal-EPA:

24 (A) The information required for an E2 facility.

25 (B) Identification of the applicant's environmental legal  
26 requirements.

27 (C) A description of the applicant's environmental management  
28 system that identifies roles, responsibilities, and authorities,  
29 reporting and recordkeeping, emergency response procedures, staff  
30 training, monitoring, and corrective action processes for  
31 noncompliance with the environmental management system.

32 (D) Voluntary self-assessments or audits.

33 (E) Procedures for internal and external environmental  
34 communications.

35 (3) A facility may participate in this program for up to three  
36 years, and may apply to renew its participation at the expiration  
37 of each three-year period. Incentives for an E3 ~~facilities~~ *facility*  
38 may include, but are not limited to, public recognition of facility  
39 performance, including the ability to use for promotional purposes  
40 a logo to be developed by Cal-EPA for E3 facilities, ~~reduced fees,~~

1 ~~reduced inspection priority, a single point-of-contact~~ *a single point*  
2 *of contact* between the facility and Cal-EPA, ~~streamlined~~  
3 ~~environmental reporting, reduced monitoring requirements, and~~  
4 ~~prioritized and expedited~~ permit and permit amendment review  
5 ~~processing.~~

6 (d) (1) In order to participate as an E4 facility, a facility shall  
7 meet the criteria for participation as an E3 facility, and shall have  
8 done both of the following:

9 (A) Implemented and completed at least one full cycle of an  
10 environmental management system as verified by an unrelated  
11 third-party qualified to audit environmental management systems.

12 (B) Committed to measures for continuous and sustainable  
13 environmental progress and community involvement.

14 (2) To apply to become an E4 facility, an applicant shall submit  
15 all of the following:

16 (A) The information required to apply to become an E3 facility.

17 (B) Documentation evidencing implementation and completion  
18 of at least one full cycle of an environmental management system  
19 and evidencing review and verification by an unrelated third party.

20 (C) Documentation that the applicant has committed to measures  
21 for continuous and sustainable environmental progress and  
22 community involvement.

23 (3) A facility may participate in this program for up to three  
24 years, and may apply to renew its participation at the expiration  
25 of each three-year period. Incentives for ~~a~~ *an* E4 facility may  
26 include all of the incentives available to an E3 facility, including  
27 the ability to use for promotional purposes a logo to be developed  
28 by Cal-EPA for E4 facilities, as well as preferential contracting  
29 status with the ~~state, penalty mitigation, and the ability to~~  
30 ~~implement alternative compliance measures proposed by the person~~  
31 ~~or facility and approved by the appropriate board in accordance~~  
32 ~~with Section 57035.~~ *state.*

33 57033. (a) The secretary shall develop guidelines and  
34 procedures for implementation of the program, including  
35 procedures for submitting applications, which shall include a  
36 reliance upon an independent third-party sustainability index;  
37 guidelines for annual reports from participating persons or  
38 facilities; and procedures for reviewing program implementation.

39 (b) Upon review of an application, the secretary may approve  
40 or deny the facility's participation in the appropriate category

1 within the program. The denial of a facility's participation in the  
2 program shall not be with prejudice or otherwise prevent  
3 reapplication by the facility. If a participant fails to maintain a  
4 record of sustained compliance, fails to resolve an alleged  
5 environmental violation within 180 days, or fails to meet the  
6 requirements or criteria for participation in the program or any  
7 category within the program, the secretary may revoke or suspend  
8 their participation in the program or revoke participation in a higher  
9 level and approve its participation in a lower level of the program.  
10 The secretary shall provide reasonable notice of the reasons for  
11 the suspension or revocation and allow the participant to respond  
12 prior to making a decision.

13 (c) The secretary's decision to approve, deny, revoke, or suspend  
14 a facility's participation in any category of the program is  
15 discretionary and shall be exempt from judicial review.

16 57034. (a) A participant shall submit an annual report in a  
17 format and schedule prescribed by the secretary, which shall  
18 include information on environmental performance relevant to the  
19 program.

20 (b) Cal-EPA shall submit a report to the Governor and to the  
21 members of the Assembly Committee on Environmental Safety  
22 and Toxic Materials and the members of the Senate Committee  
23 on Environmental Quality by December 1 of every even-numbered  
24 year. The report shall include the information from the participants'  
25 reports as well as information on the incentives that have been  
26 provided and the innovations that have been developed by the  
27 agency and participants.

28 (c) (1) The requirement for submitting a report imposed under  
29 subdivision (b) is inoperative on December 1, 2016, pursuant to  
30 Section 10231.5 of the Government Code.

31 (2) A report submitted pursuant to subdivision (b) shall be  
32 submitted in compliance with Section 9795 of the Government  
33 Code.

34 ~~57035. (a) (1) To the extent consistent with federal law and~~  
35 ~~notwithstanding any other law, any of the BDOs may grant~~  
36 ~~alternative compliance measures to the regulations adopted~~  
37 ~~pursuant to their authorities, respectively, under Section 57033,~~  
38 ~~for a facility that has been accepted by Cal-EPA as meeting the~~  
39 ~~criteria an for E4 facility under subdivision (d) of Section 57032,~~  
40 ~~including, but not limited to, all of the following:~~

~~(A) Changes to monitoring and reporting requirements and schedules.~~

~~(B) Streamlined submission requirements for permit renewals.~~

~~(C) The ability to make certain operational changes without prior approval.~~

~~(D) Other changes that would not increase a facility's impact on the environment.~~

~~(2) These alternative compliance measures may allow alternative methods for achieving compliance with prescribed regulatory standards if the facility requesting the alternative compliance method demonstrates that the method will do all of the following:~~

~~(A) Meet the purpose of the applicable regulatory standard.~~

~~(B) Promote achievement of those purposes through increased reliability, efficiency, or cost-effectiveness.~~

~~(C) Afford environmental protection equal to or greater than that provided by the applicable regulatory standard.~~

~~(3) An alternative compliance measure shall not be approved that would alter an ambient air quality standard, groundwater protection standard, or water quality standard, and an alternative compliance measure shall not be approved that would increase the pollutants released to the environment, increase impacts to state waters, or otherwise result in a loss of wetland acreage.~~

~~(b) Notwithstanding any other law, an alternate compliance method may be approved under this section after at least 30 days' public notice and opportunity for comment and a determination that the alternative compliance measure meets the requirements of this section.~~

~~(e) Nothing in this section shall be interpreted or applied in a manner inconsistent with the applicable federal law or other requirement necessary for the state to obtain or retain federal delegation or approval of any regulatory program. Before approving an alternative compliance measure affecting that regulatory program, each BDO may obtain the approval of the federal agency responsible for that delegation or approval of the regulatory program. Any one of the BDOs may withdraw approval of the alternative compliance measure at any time if any conditions under which the alternative compliance measure was originally approved change, or if the recipient has failed to comply with any of the alternative compliance measure requirements.~~



1     ~~(d) Upon approval of an alternative compliance measure under~~  
2 ~~this section, the alternative compliance measure shall be~~  
3 ~~incorporated into the relevant permits as a minor permit~~  
4 ~~modification with no associated fee. The permits shall also contain~~  
5 ~~any provisions that shall go into effect if the participant fails to~~  
6 ~~fulfill its obligations under the variance or is removed from the~~  
7 ~~program for reasons specified by the director under subdivision~~  
8 ~~(b) of Section 57033.~~

9     ~~57036.~~

10    57035. The Governor's Performance Plus Awards shall be  
11 awarded each year to recognize participants in the program that  
12 have demonstrated extraordinary leadership, innovation, and  
13 commitment to implementation of pollution prevention practices  
14 and other efforts to reduce environmental impacts and improve  
15 California's natural environment.